

Ruling based on laws of evidence

Judges often allow lawyers to make a "proffer," or offer of proof, when evidence is ruled inadmissible in court.

The judge will allow the lawyer to present the evidence, on the record and under oath, so the appeals court that later reviews the case will know what the argument was all about.

But it is unusual for a judge to set aside days, even weeks, to hear a proffer, as did Shelby County Criminal Court Judge Joseph Brown when he agreed yesterday to let James Earl Ray's lawyers present new evidence about the assassination of the Rev. Martin Luther King Jr.

Brown ruled that Tennessee law currently provides no mechanism for a defendant, even one who is "actually innocent," to present new evidence if more than three years has elapsed since his or her original appeals were exhausted.

The state's appellate courts may need to consider whether such a bar on new evidence is fair to defendants, Brown said.

So, the judge said, he will permit Ray's lawyers to call as many witnesses as they like to "build a record" that they can later present to the appeals courts, which do not listen to live testimony. ■